



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9913-39-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by the National Parks Conservation Association, et al., (“Plaintiffs”) in the United States District Court for the District of Minnesota: National Parks Conservation Association v. McCarthy, Civil Action No. 12-3043 (RHK/JSM) (D. Minn.). On December 5, 2012, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform a mandatory duty to respond to a 2009 certification by the Department of the Interior (“DOI”) that visibility impairment in Minnesota’s Voyageurs National Park and Michigan’s Isle Royale National Park is reasonably attributable to emissions from Xcel Energy’s coal-fired Sherburne County Generating Station (“Sherco”) in Minnesota. The proposed consent decree would establish deadlines for EPA to take such action.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2014-0508 online at www.regulations.gov (EPA’s preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand

delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Matthew C. Marks, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3276; fax number: (202) 564-5603; email address: marks.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information about The Proposed Consent Decree

The proposed consent decree would address a lawsuit filed by Plaintiffs alleging that EPA failed to perform a mandatory duty pursuant to 40 CFR 51.302(c)(4)(iii) and (iv) to promulgate a federal reasonably attributable visibility impairment best available retrofit technology (“RAVI BART”) determination for the Sherco power plant in Minnesota in response to the DOI’s October 21, 2009 certification. In response to the lawsuit, EPA filed an answer on February 1, 2013, denying that the Administrator has a mandatory duty to promulgate RAVI BART for Sherco because EPA has not yet determined that visibility impairment at one or more Class I areas is reasonably attributable to emissions from Sherco. The proposed consent decree would require EPA to sign a proposed rule by February 27, 2015, and a final rule by August 31, 2015, in which EPA determines under 40 CFR 51.302(c)(4)(i) whether visibility impairment in Voyageurs National Park or Isle Royale National Park is reasonably attributable to Sherco. If

EPA determines that visibility impairment in Voyageurs National Park or Isle Royale National Park is reasonably attributable to Sherco, then EPA's final rulemaking shall also include EPA's final determination of BART for Sherco. However, if EPA determines that visibility impairment in neither Voyageurs National Park nor Isle Royale National Park is reasonably attributable to Sherco, then BART for Sherco will not be required. In addition, the proposed consent decree states that if EPA signs a proposed rule by February 27, 2015, and a final rule by August 31, 2015, in which EPA either approves a State Implementation Plan ("SIP") or promulgates a Federal Implementation Plan ("FIP") under 40 CFR 51.308 that includes a final determination of BART for Sherco, then EPA's obligation is fulfilled. The proposed consent decree also resolves any claim the Plaintiffs have for the costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information about Commenting On The Proposed Consent Decree

A. How Can I Get A Copy Of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2014-0508) contains a copy of the proposed consent decree. The official public docket is

available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that

your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the

comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 27, 2014.

Lorie J. Schmidt,
Associate General Counsel.

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